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CERTIFICATION OF SERVICE OF COMPLAINT ON UNITED STATES EPA AND UNITED STATES
DOJ

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Counsel LSA(s):

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Lu, Sarah (ENRD); Berman, Lisa (ENRD)

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DEPT. OF JUSTICE - ENPD
ENVIRONMENTAL DIVISION

14 MAR 11 10:25

9 Attorneys for Plaintiff
10 CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH, a
14 501(c)(3) nonprofit, public benefit
15 Corporation,

16 Plaintiff,

17 v.

18 HUMBOLDT WASTE MANAGEMENT
19 AUTHORITY; RECOLOGY
20 HUMBOLDT COUNTY; DOES 1-10,
21 Inclusive,

22 Defendant.
23
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25
26
27
28

CASE NO: 3:14-cv-01074 DMR

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

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CERTIFICATE OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 100 E Street, Suite 318, Santa Rosa, CA 95404. On the date set forth below, I served the following described document(s):

**COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, CIVIL
PENALTIES, RESTITUTION AND REMEDIATION (Environmental - Clean
Water Act 33 U.S.C. § 1251, *et seq*)**

on the following parties by placing a true copy in a sealed envelope, addressed as follows:


Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on March 7, 2014 at Santa Rosa, California.


Wojciech P. Makowski

1 Jack Silver, Esq. SB # 160575
LAW OFFICE OF JACK SILVER
2 Jerry Bernhaut, Esq. SB # 206264
Post Office Box 5469
3 Santa Rosa, California 95402-5469
Telephone: (707) 528-8175
4 Facsimile: (707) 528-8675
Email: lhm28843@sbcglobal.net

5 Attorney for Plaintiff
6 CALIFORNIA RIVER WATCH

7 UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9 CALIFORNIA RIVER WATCH, a
501(c)(3), nonprofit, public benefit
10 Corporation,

11 Plaintiff,

12 v.

13 HUMBOLDT WASTE MANAGEMENT
AUTHORITY; RECOLOGY HUMBOLDT
14 COUNTY; DOES 1 - 10 INCLUSIVE,

15 Defendants.

Case No.:

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION
(Environmental - CWA - 33 U.S.C. § 1251
et seq.)**

16 NOW COMES Plaintiff, CALIFORNIA RIVER WATCH ("RIVER WATCH"), by and
17 through its attorneys, and for its Complaint against Defendants, HUMBOLDT WASTE
18 MANAGEMENT AUTHORITY, RECOLOGY HUMBOLDT COUNTY and DOES 1 - 10
19 INCLUSIVE ("DEFENDANTS") states as follows:

20 **I. NATURE OF THE CASE**

21 1. This is a citizens' suit for relief brought by RIVER WATCH under the Federal Water
22 Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*,
23 specifically CWA §§ 301, 402, and 505, 33 U.S.C. §§ 1311, 1342 and 1365, to prevent
24 DEFENDANTS from repeated and ongoing violations of the CWA. These violations are
25 detailed in the Notice of Violations and Intent to File Suit dated July 1, 2013 ("CWA Notice")
26 made part of this pleading and attached hereto as EXHIBIT A.

27 2. As detailed in the CWA Notice, DEFENDANTS are the responsible owners, operators
28 and/or managers of an historic burn dump site known as the Cummings Road Burn Ash Facility

1 (“Facility”), located on Cummings Road, in the City of Eureka, Humboldt County, California.
 2 RIVER WATCH contends DEFENDANTS are routinely violating the CWA by discharging
 3 pollutants, including cadmium, copper and lead from the Facility and various point sources
 4 within the Facility, including burn ash piles, equipment and vehicles, to waters of the United
 5 States, including a tributary to Ryan Creek, without a National Pollutant Discharge Elimination
 6 System (“NPDES”) permit, in violation of CWA § 301(a), 33 U.S.C. § 1311(a).

7 3. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to
 8 public participation in the enforcement of the CWA. 33 U.S.C. § 1251(e) provides, in pertinent
 9 part:

10 “Public participation in the development, revision, and enforcement of any
 11 regulation, standard, effluent limitation, plan or program established by the
 12 Administrator or any State under this chapter shall be provided for, encouraged,
 and assisted by the Administrator and the States. ”

13 4. RIVER WATCH contends DEFENDANTS illegally discharge to waters which are
 14 habitat for threatened or endangered species as that term is defined by the California and United
 15 States Environmental Protection Agencies.

16 5. RIVER WATCH seeks injunctive relief to prohibit future violations, civil penalties, fees
 17 and costs, and any other relief necessary to remediate the harm caused by DEFENDANTS’
 18 violations of the CWA as alleged in this Complaint.

19 **II. PARTIES**

20 6. Plaintiff CALIFORNIA RIVER WATCH is a 501(c)(3) nonprofit, public benefit
 21 corporation duly organized under the laws of the State of California, with headquarters and
 22 main office located in Sebastopol, California. The specific purpose of this corporation is to
 23 protect, enhance, and help restore the surface and ground waters of California including rivers,
 24 creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna.
 25 And to educate the public concerning environmental issues associated with these environs. To
 26 further these goals, RIVER WATCH actively seeks federal and state agency implementation
 27 of the CWA and other laws and, where necessary, directly initiates enforcement actions on
 28 behalf of itself and its members.

1 7. Members of RIVER WATCH live in and around the City of Eureka and use and enjoy
2 the waters into which DEFENDANTS have caused, are causing, and will continue to cause,
3 pollutants to be discharged. Members of RIVER WATCH have interests in the Ryan Creek
4 Watershed which interests have been, are being, or may be adversely affected by
5 DEFENDANTS' violations of the CWA as alleged in this Complaint. Said members use the
6 affected watershed for recreation, sports, boating, kayaking, swimming, hiking, photography,
7 nature outings, and the like. The relief sought will redress the injury in fact to RIVER WATCH
8 and its members and the likelihood of future injury and interference with the interests of said
9 members. The relief sought herein will redress the harms to RIVER WATCH caused by
10 DEFENDANTS' activities as complained of herein.

11 8. RIVER WATCH is informed and believes, and on said information and belief alleges,
12 that Defendant HUMBOLDT WASTE MANAGEMENT AUTHORITY is now, and at all times
13 relevant to this Complaint was, a Joint Powers Authority organized under the laws of the State
14 of State of California with offices located at 1059 Hawthorne Street in the City of Eureka,
15 California, and consisting of the municipalities of Arcata, Blue Lake, Eureka, Ferndale, Rio
16 Dell and Humboldt County

17 9. RIVER WATCH is informed and believes, and on said information and belief alleges,
18 that Defendant RECOLOGY HUMBOLDT COUNTY is now, and at all times relevant to these
19 proceeding was, a corporation organized under the laws of the state of State of California, with
20 a registered address of 50 California Street, 24th Floor, San Francisco, California, 94111-9796,
21 and doing business at 949 Hawthorne Street in the City of Eureka, California.

22 10. RIVER WATCH is informed and believes, and on said information and belief alleges
23 that Defendant DOES 1-10 Inclusive, respectively, are persons, partnerships, corporations and
24 entities, who are, or were, responsible for, or in some way contributed to, the violations which
25 are the subject of this Complaint or are, or were, responsible for the maintenance, supervision,
26 management, operations, or insurance coverage of the Facility and operations by
27 DEFENDANTS on the Facility, as identified in the CWA Notice and this Complaint. The
28 names, identities, capacities, and functions of defendants DOES 1 - 10, Inclusive, are presently

1 unknown to RIVER WATCH. RIVER WATCH shall seek leave of court to amend this
2 Complaint to insert the true names of said DOES defendants when the same have been
3 ascertained.

4 **III. JURISDICTIONAL ALLEGATIONS**

5 11. Subject matter jurisdiction is conferred upon this Court by CWA § 505(a)(1), 33 U.S.C.
6 § 1365(a)(1), which states in part that, “any citizen may commence a civil action on his own
7 behalf against any person . . . who is alleged to be in violation of (A) an effluent standard or
8 limitation . . . or (B) an order issued by the Administrator or a State with respect to such a
9 standard or limitation.”

10 12. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods
11 from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit
12 from the watershed and associated natural resources into which DEFENDANTS discharge
13 pollutants, or by which DEFENDANTS’ operations as alleged in this Complaint adversely
14 affect their interests, in violation of the CWA §§ 301(a) and 402(p), 33 U.S.C. §§ 1311(a),
15 1342(p). The health, economic, recreational, aesthetic and environmental interests of RIVER
16 WATCH and its members may be, have been, are being, and will continue to be adversely
17 affected by DEFENDANTS’ unlawful violations as alleged herein. RIVER WATCH and its
18 members contend there exists an injury in fact to them, causation of that injury by
19 DEFENDANTS’ complained of conduct, and a likelihood that the requested relief will redress
20 that injury.

21 13. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), notice of the CWA
22 violations alleged in this Complaint was given more than sixty (60) days prior to
23 commencement of this lawsuit, to: (a) DEFENDANTS, (b) the United States Environmental
24 Protection Agency (“EPA”) Federal and Regional, and (c) the State of California Water
25 Resources Control Board.

26 14. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint has
27 been served on the United States Attorney General and the Administrator of the Federal EPA.

28 //

1 15. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as the
2 Facility under DEFENDANTS' operation and/or control, and the sites where illegal discharges
3 occurred, which are the source of the violations complained of in this action, are located within
4 this District.

5 **IV. GENERAL ALLEGATIONS**

6 16. RIVER WATCH incorporates by reference all the foregoing including the CWA Notice
7 as though the same were separately set forth herein.

8 17. DEFENDANTS own and operate the Facility, an historic burn dump site, located at the
9 end of Cummings Road in Eureka, California. The Facility consists of approximately 5.2 acres
10 and is comprised of approximately 60,000 cubic yards of burn ash residue. Approximately
11 49,000 cubic yards are located on property owned by Defendant RECOLOGY HUMBOLDT
12 COUNTY, and the remaining 11,000 cubic yards are located on property owed by Defendant
13 HUMBOLDT WASTE MANAGEMENT AUTHORITY. The burn-ash debris was generated
14 by burning trash; combustible materials, such as wood, paper, and plastics were reduced to ash,
15 leaving non-combustible materials such as metal, glass, and brick behind. Small pieces of metal
16 subsequently rusted or corroded to oxide dust, leaving inert materials behind such as glass,
17 brick, tile, and concrete. Large pieces of metal have not completely corroded and remain within
18 the waste, including large metal objects such as car bodies, water heaters and other appliances.
19 Thus, the burn-ash debris on the Facility includes not only the ash, but also non-combustible
20 materials dominated by glass, rusty metal shards, and larger metal objects.

21 18. RIVER WATCH contends DEFENDANTS are discharging cadmium, copper, and lead
22 from point sources within the Facility including burn ash piles, equipment, and vehicles, into
23 waters of the United States, including the tributary to Ryan Creek. Environmental and
24 Geotechnical Investigation Reports have confirmed that burn-ash material at the Facility
25 exceeds the California hazardous waste levels for various constituents, including cadmium,
26 copper, and lead. The burn-ash material from the Facility is eroding from point sources within
27 the Facility and being deposited into adjacent surface waters. In addition, the leachate from the
28 burn-ash material is impacting both surface and ground waters.

1 19. All illegal discharges complained of in this Complaint occur in the tributary to Ryan
2 Creek, a water of the United States.

3 20. The Regional Water Quality Control Board, North Coast Region, has determined that the
4 watershed area and affected waterway identified in this Complaint and the CWA NOTICE are
5 beneficially used for water contact recreation, non-contact water recreation, fish and wildlife
6 habitat, preservation of rare and endangered species, fish migration, fish spawning, navigation,
7 and sport fishing, and has established water quality standards for Ryan Creek in its Water
8 Quality Control Plan, generally referred to as the Basin Plan.

9 21. Information available to RIVER WATCH indicates the continued existence of unlawful
10 discharges of a pollutant from a point source into a water of the United States without a NPDES
11 permit at the Facility.

12 **V. STATUTORY BACKGROUND**

13 22. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters
14 of the United States, unless such discharge is in compliance with various enumerated sections
15 of the CWA. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in
16 violation of, the terms of a NPDES permit issued pursuant to CWA § 402, 33 U.S.C. § 1342.

17 23. CWA § 402(p), 33 U.S.C. § 1342(p), requires DEFENDANTS to apply for a NPDES
18 Permit for their point source discharges from the Facility to the tributary to Ryan Creek.

19 24. CWA § 502(6), 33 U.S.C. § 1362(6), defines a pollutant as “dredged spoil, solid waste,
20 incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological
21 materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt
22 and industrial, municipal and agricultural waste discharged into water.”

23 25. Pursuant to CWA § 402, 33 U.S.C. § 1342, the Administrator of the EPA has authorized
24 California’s State Water Resources Control Board to issue NPDES permits.

25 26. CWA §§ 505(a)(1) and (f), provide for citizen enforcement actions against any “person,”
26 including individuals, corporations, or partnerships, for violations of NPDES permit
27 requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f),
28 § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).

1 Violators of the CWA are also subject to an assessment of civil penalties of up to \$37,500 per
 2 day/per violation for all violations, pursuant to CWA §§ 309(d) and 505, 33 U.S.C. §§ 1319(d),
 3 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

4 27. The United States EPA adopted the National Toxics Rule (“NTR”) on February 5, 1993
 5 and the California Toxics Rule (“CTR”) on May 18, 2000. *See* 40 C.F.R. part 131. When
 6 combined with the beneficial use designations in the Basin Plan, these rules contain water
 7 quality standards applicable to this discharge. The State Water Resources Control Board, on
 8 April 26, 2000, adopted the Policy for Implementation of Toxics Standard for Inland Surface
 9 Waters, Enclosed Bays, and Estuaries of California that contains requirements for
 10 implementation of the NTR and CTR. Pursuant to 40 C.F.R. part 131 the CTR criteria “are
 11 legally applicable in the State of California for inland surface waters, enclosed bays and
 12 estuaries for all purposes and programs under the Clean Water Act.”

13 28. RIVER WATCH contends the California Human Health Screening Levels adopted as
 14 Corrective Action Objectives in DEFENDANTS’ Corrective Action Plan are less stringent and
 15 thereby less protective of human health and the environment than the CTR criteria.

16 VI. CLAIM FOR RELIEF

17 **Violation of CWA § 301(a), 33 U.S.C. § 1311(a) – Violation of the Prohibition on the** 18 **Discharge of Pollutants from Point Sources to Waters of the United States Without a** **NPDES Permit Issued under CWA § 402, 33 U.S.C. § 1342**

19 29. RIVER WATCH realleges and incorporates Paragraphs 1 through 28 as if fully set forth
 20 herein, including the CWA Notice. RIVER WATCH is informed and believes, and based on
 21 such information and belief alleges as follows:

22 30. CWA § 301(a), 33 U.S.C. § 1331(a), prohibits the discharge of any pollutant from any
 23 point source to waters of the United States, except for discharges in compliance with an
 24 NPDES permit issued pursuant to CWA § 402, 33 U.S.C. § 1342.

25 31. DEFENDANTS are discharging pollutants, such as toxic metals, without a NPDES
 26 permit, from the Facility and point sources within the Facility such as burn-ash piles, equipment,
 27 and vehicles, into a tributary to Ryan Creek, which is a tributary to Humboldt Bay, both waters
 28 of the United States.

1 32. Since the date that DEFENDANTS took ownership and responsibility for conditions at
2 the Facility to the present, DEFENDANTS have discharged and continue to discharge pollutants
3 from the Facility without having obtained a NPDES permit as required by CWA § 301(a), 33
4 U.S.C. § 1311(a). Said discharges are therefore unlawful discharges of pollutants from point
5 sources into waters of the United States within the meaning of CWA § 301, 33 U.S.C. § 1311.
6 These violations of CWA by DEFENDANTS are not wholly past violations, are capable of
7 repetition, and are therefore enforceable in this citizen suit action, because, inter alia, these
8 violations and other ongoing and continuous violations result from the same underlying, and
9 inadequately resolved causes.

10 33. DEFENDANTS' violations are ongoing, and will continue after the filing of this
11 Complaint. RIVER WATCH alleges herein all violations which may have occurred or will
12 occur prior to trial, but for which data may not have been available or submitted or apparent
13 from the face of the reports or data submitted by DEFENDANTS to the State Water Resources
14 Control Board, the Regional Water Quality Control Board, North Coast Region, or to RIVER
15 WATCH prior to the filing of this Complaint. RIVER WATCH will amend this Complaint if
16 necessary to address DEFENDANTS' violations of CWA § 301(a), 33 U.S.C. § 1311(a) which
17 may occur after the filing of this Complaint. Each of DEFENDANTS' violations of NPDES
18 permit requirements and unpermitted discharges of pollutants has been and is a separate
19 violation of the CWA.

20 34. RIVER WATCH alleges that without the imposition of appropriate civil penalties and
21 the issuance of appropriate equitable relief, DEFENDANTS will continue to violate permit
22 requirements and prohibitions against unpermitted point source discharges with respect to the
23 enumerated discharges and releases alleged herein and described in the CWA Notice. Further,
24 that the relief requested in this Complaint will redress the injury to RIVER WATCH and its
25 members, prevent future injury, and protect the interests of its members that are or may be
26 adversely affected by DEFENDANTS' violations of the CWA.

27 35. RIVER WATCH alleges that continuing violations of the CWA by DEFENDANTS at
28 the Facility will irreparably harm RIVER WATCH and its members, for which harm RIVER

1 WATCH and its members have no plain, speedy or adequate remedy at law.

2 **VII. RELIEF REQUESTED**

3 WHEREFORE, RIVER WATCH respectfully request that this Court grant the following
4 relief:

5 36. Declare DEFENDANTS to have violated and to be in violation of the CWA as alleged
6 herein;

7 37. Enjoin DEFENDANTS from discharging pollutants from the Facility and point sources
8 within the Facility to the surface waters surrounding and downstream from the Facility until
9 such time as DEFENDANTS have obtained a NPDES permit;

10 38. Order DEFENDANTS to pay civil penalties of \$37,500 per day/per violation for each
11 violation of the CWA pursuant to CWA §§ 309(d) and 505(a), 33 U.S.C. §§ 1319(d), 1365(a)
12 and 40 C.F.R. §§ 19.1-19.4;

13 39. Order DEFENDANTS to take appropriate actions to restore the quality of United States
14 waters impaired by their activities as alleged in this Complaint;

15 40. Award costs (including reasonable attorney, witness, and consultant fees) to RIVER
16 WATCH as authorized by the CWA § 505(d), 33 U.S.C. §1365(d); and

17 41. Award any such other and further relief as this Court may deem appropriate.
18

19 DATED: March 7, 2014


JERRY BERNHAUT
Attorney for Plaintiff
CALIFORNIA RIVER WATCH

EXHIBIT A



290 South Main Street, #817 • Sebastopol, CA 95472 • US@ncriverwatch.org

***VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED***

July 1, 2013

Mike Leggins, General Manager
Recology Humboldt County
949 West Hawthorne St.
Eureka, CA 95501

Mark Lovelace, Chair
Board of Directors
Humboldt Waste Management Authority
A Joint Powers Authority
1059 West Hawthorne Street
Eureka, CA 95501

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Leggins and Mr. Lovelace:

The Clean Water Act ("CWA" or the "Act") §505(b), 33 U.S.C. §1365(b), requires that sixty (60) days prior to the initiation of a civil action under CWA §505(a), 33 U.S.C. §1365(a), a citizen must give notice of intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the alleged violations occur.

By this Notice, California River Watch ("River Watch") hereby places Recology Humboldt County and Humboldt Waste Management Authority, collectively referred to hereafter as the "Dischargers," as owners and operators of the Cummings Road Burn Ash Site in Eureka, on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch intends to bring suit in the U.S. District Court against the Dischargers for continuing violations of "an effluent standard or limitation", and/or "an order issued by the Administrator or a State with respect to such standard or limitation" issued under the CWA, in particular, but not limited to CWA §505(a)(1), 33 U.S.C. §1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board, North Coast Region, Water Quality Control Plan or "Basin Plan".

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of several enumerated statutory provisions. One such exception authorizes a polluter who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollution Discharge Elimination System (“NPDES”) Permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that the violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a), and thus in violation of the CWA. Without a NPDES permit all surface and subsurface discharges from a point source to waters of the United States are illegal.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the agency operates satisfies certain criteria. *See* 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary Regional Water Quality Control Boards to issue NPDES permits. The entity responsible for issuing NPDES permits, including municipal stormwater permits, and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, North Coast Region (“RWQCB”).

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. *The specific standard, limitation, or order alleged to have been violated.*

River Watch hereby notices the Dischargers that they are not in possession of a NPDES permit allowing the discharge of pollutants from the Cummings Road Burn Ash Site and numerous point sources within the Cummings Road Burn Ash Site including burn ash piles and materials, maintenance vehicles, and equipment the Ryan Creek Watershed, a water of the United States, in violation of CWA § 301(a), 33 U.S.C. § 1311(a), CWA §§ 402(a) and 402(b), 33 U.S.C. §§ 1342(a) and 1342(b).

2. *The activity alleged to constitute a violation.*

River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary, the CWA prohibits all discharges of pollution from a point source to a water of the United States without a NPDES permit. River Watch alleges the Dischargers are discharging pollutants including cadmium, copper, and lead from various point sources within the Cummings Road Burn Ash Site, to waters of the United States.

3. *The person or persons responsible for the alleged violation.*

The entities responsible for the alleged violations identified in this Notice are Recology Humboldt County and Humboldt Waste Management Authority identified throughout this Notice as the “Dischargers” and those of their employees responsible for compliance with the CWA for the Cummings Road Burn Ash Site.

4. *The location of the alleged violation.*

The location of the violations are identified in the BACKGROUND section of this Notice as well as in records either created or maintained by or for the Dischargers with regard to the Cummings Road Burn Ash Site which relate to activities on the site.

5. *The date or dates of violations or a reasonable range of dates during which the alleged activities occurred.*

Disposition, discharge and release of pollutants from the Cummings Road Burn Ash Site has been ongoing for several years. The CWA is a strict liability statute with a 5-year statute of limitations; therefore, the range of dates covered by this Notice is June 28, 2008 through June 28, 2013. River Watch will from time to time supplement this Notice to include all violations which occur after the date of this Notice. The majority of the violations such as discharging pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES permit, failure to implement the requirements of the CWA, and failure to meet water quality objectives, are continuous, and therefore each day is a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California River Watch, 290 S. Main Street,, #817, Sebastopol, CA 95472 – a non-profit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to, its rivers, creeks, streams, wetlands, vernal pools, and tributaries. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

Sarah Danley, Esquire
California River Watch
290 South Main Street, #817
Sebastopol, CA 95472
Tel. 707-528-8175/ Fax 707-528-8675.

BACKGROUND

The Cummings Road Burn Ash Site (the "Site") is located two miles southeast of Eureka, California at the end of Cummings Road, in the Ryan Creek Watershed. The Site consists of approximately 5.2 acres. This historic burn dump is comprised of approximately 60,000 cubic yards of burn ash residue, approximately 49,000 cubic yards of which are located on property owned by Recology Humboldt County. The remaining 11,000 cubic yards of burn ash residue are located on property owned by Humboldt Waste Management Authority.

Recology Humboldt County submitted an Environmental and Geotechnical Investigation Report in January of 2011 to the RWQCB confirming that burn ash material at the Site exceeded California's hazardous waste levels for various constituents including cadmium, copper, and lead. Leachate from the burn ash material is impacting both surface water and ground waters. Burn ash material is eroding from the Site and being deposited into surface waters, including the Ryan Creek watershed. Ryan Creek Watershed is a tributary to Fresh Creek which flows into Humboldt Bay and the Pacific Ocean.

The Basin Plan identifies several existing beneficial uses for the Ryan Creek Watershed and Freshwater Creek, including municipal and domestic supply, agricultural supply, groundwater recharge, freshwater replenishment, water contact recreation, non-contact water recreation, commercial and sport fishing, cold freshwater habitat, wildlife habitat, and the preservation of rare, threatened, or endangered species. The Basin Plan also identifies the same existing beneficial uses for Humboldt Bay and the Pacific Ocean, as well as marine habitat, wildlife habitat, spawning, reproduction and shellfish harvesting.

The RWQCB has determined that the beneficial uses of surface waters and ground waters are impaired and threatened by the Dischargers' violations of the CWA as alleged in this Notice. The discharges of cadmium, copper and lead from the Site contribute to violations of the applicable water quality standards set forth in the Basin Plan.

VIOLATIONS

River Watch contends that between June 28, 2008 and June 28, 2013 the Dischargers violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants such as cadmium, copper, and lead, from a point source, (burn ash piles, equipment, and vehicles,) to the Ryan Creek Watershed, a water of the United States, without a NPDES Permit. The violations discussed herein are derived from records publicly available, or records in the possession and control of the Dischargers relating to the Site. River Watch contends these violations are continuing.

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Dischargers into compliance with the CWA and reduce the biological impacts of their non-compliance upon the environment surrounding the Site:

1. Application for a NPDES permit for all discharges from the Site;
2. Immediate cessation of all unpermitted discharges of pollutants from point sources on the Site into waters of the United States;
3. Cleanup of all pollutants in surface and ground waters at or near the Site to below the California mandated levels for those pollutants.

CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside, work and recreate in the affected watershed area. The members' health, use and enjoyment of this natural resource is specifically impaired by the Dischargers' violations of the CWA as identified in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Dischargers for the violations identified herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for these violations. If the Dischargers wish to pursue such discussions, it is suggested that a dialog be initiated soon so that discussions may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that notice period ends.

Very truly yours,



Sarah Danley

SD:lhbm

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